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10/730,493	12/08/2003	Michael T. Morman	KCX-654A (19124A)	2537
22827 7590 02/12/2007 DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			EXAMINER CRAIG, PAULA L	
			ART UNIT 3761	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/12/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/730,493

Applicant(s)

MORMAN ET AL.

Examiner

Paula L. Craig

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 7,8,10,11,14 and 22-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,9,12,13 and 15-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-35 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/26/06
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. The double patenting rejection of Claims 1 and 18 is withdrawn in view of the terminal disclaimer filed November 15, 2006. Applicant's arguments with respect to Claims 1-6, 9, 12-13, and 15-21 have been considered but are moot in view of the new grounds of rejection. Applicant argues that information incorporated by reference in a document cited as prior art is not part of the reference and is not anticipatory. A document which is incorporated by reference is part of the specification and is interchangeable with the same material in the specification, MPEP 608.01(p)(I)(A)(1).

### ***Election/Restrictions***

2. As indicated in the prior action mailed July 24, 2006, Claims 7-8, 10-11, 14, and 22-35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1-6, 9, and 18-21 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent No. 6,552,245 to Roessler et al.
6. For Claim 1, Roessler teaches an absorbent article including a chassis having a front waist region, a back waist region, and a crotch region extending between the front and back waist regions (Figs. 1-8, col. 1, lines 6-10, col. 2, lines 57-63, col. 4, lines 58-66). An outer cover member extends longitudinally between the front and back waist regions, a bodyside liner extends longitudinally between the front and back waist regions, and an absorbent body structure is sandwiched between the outer cover member and the bodyside liner (outer cover 30, bodyside liner 32, absorbent body 34, Figs. 1-8, Abstract, col. 5, lines 5-25). The bodyside liner includes a material having a necked base layer of a fluid permeable material, the base layer material being necked by being tensioned in a first direction (col. 14, lines 1-50, col. 16, line 43 to col. 18, line 39). Roessler teaches at least a first and a second strip of elastomeric material attached to the necked base layer material with a space between the strips such that a center necked region of the base layer material is bordered on at least two longitudinally extending sides by flat, planar composite regions of the elastomeric materials and the base layer material, the center region being generally aligned with the absorbent body structure, and the center region of necked base layer material being attached to the

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absorbent body structure in its necked condition and the composite regions are stretchable in at least a second direction of the absorbent article (first and second strips of elastomeric material are leg elastics 36; side panels 42 and containment flaps 46 are also elastomeric strips; Figs. 1-2 and 5-8, col. 5, lines 26-53, col. 6, lines 27-52, col. 7, lines 6-16, col. 14, lines 1-50, col. 16, line 43 to col. 18, line 64, col. 20, line 66 to col. 21, line 64, col. 22, lines 6-52, col. 23, line 61 to col. 24, line 47; note leg elastics 36 are stated to be sheets; leg elastics 36 extend in the lateral direction as well as the longitudinal direction and are stretchable in both directions; Figs. 1-2 teach attachment of the leg elastics between the bodyside liner 32 and the outer cover 30; note that Applicant's specification defines "attached" as including indirect attachment, specification, page 8, lines 11-16).

7. For Claim 18, Roessler '245 teaches an absorbent article including a chassis having a front waist region, a back waist region, and a crotch region extending between the front and back waist regions (Figs. 1-8, col. 1, lines 6-10, col. 2, lines 57-63, col. 4, lines 58-66). An outer cover member extends longitudinally between the front and back waist regions, a bodyside liner extends longitudinally between the front and back waist regions, and an absorbent body structure is sandwiched between the outer cover member and the bodyside liner (outer cover 30, bodyside liner 32, absorbent body 34, Figs. 1-8, Abstract, col. 5, lines 5-25). The bodyside liner includes a material having a necked base layer of a generally fluid permeable material, the base layer material being necked by being tensioned in a first direction (col. 14, lines 1-50, col. 16, line 43 to col. 18, line 39). Roessler teaches a strip of elastomeric material attached to the necked

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base layer material along a longitudinally extending side thereof to form a flat, planar composite region and such that a region of the necked base layer material is adjacent a longitudinally extending composite region of the elastomeric materials and the base layer material, the region of necked base layer material overlying and being attached to the absorbent body structure in its necked condition, the region of base layer material remaining generally non-elastic and the composite region being stretchable in at least a transverse direction of the absorbent article (the strip of elastomeric material is leg elastic 36; side panels 42 and containment flaps 46 are also elastomeric strips; Figs. 1-2 and 5-8, col. 5, lines 26-53, col. 6, lines 27-52, col. 7, lines 6-16, col. 14, lines 1-66, col. 16, line 43 to col. 18, line 64, col. 21, lines 19-64, col. 22, lines 6-52, col. 23, line 61 to col. 24, line 47; note leg elastics 36 are stated to be sheets; leg elastics 36 extend in the lateral direction as well as the longitudinal direction and are stretchable in both directions; Figs. 1-2 teach attachment of the leg elastics between the bodyside liner 32 and the outer cover 30; the base layer material is extensible rather than elastomeric; note that Applicant's specification defines "attached" as including indirect attachment, specification, page 8, lines 11-16).

8. For Claims 2 and 19, Roessler '245 teaches the first and second strips of elastomeric materials being superimposed on and aligned with lateral sides of the underlying base layer material (Figs. 1-2, col. 5, lines 27-53, col. 6, lines 27-52, col. 23, line 61 to col. 24, line 47; note that the claims do not require that the base layer material underlie any particular component).

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9. For Claim 3, Roessler '245 teaches the first and second strips of elastomeric materials including an elastic film, the films being laminated to the base layer material such that the composite regions are neck bonded laminate regions (Fig. 2, col. 21, lines 1-49, col. 24, lines 9-20).

10. For Claims 4, 5, 20, and 21, Roessler '245 teaches the first and second strips of elastomeric materials being attached to the base layer material in either a generally untensioned state or in a generally tensioned state (col. 5, lines 43-53).

11. For Claim 6, Roessler '245 teaches the base layer material being tensioned in the machine direction prior to attaching the first and second strips of elastomeric materials to opposite lateral sides of the base layer material such that the bodyside liner has longitudinal strips of the composite regions that are stretchable in the cross direction bordering the center machine direction region of the necked base layer material (col. 7, lines 5-16, col. 14, lines 1-50, col. 17, line 11, to col. 18, line 64).

12. For Claim 9, Roessler '245 teaches the base layer material having been reversibly necked and creped prior to attachment of the first and second strips of elastomeric materials to opposite lateral sides of the base layer material, the base layer material being rendered stretchable such that the bodyside liner material is stretchable in the transverse direction and the longitudinal direction (col. 7, lines 5-16, col. 14, lines 1-50, col. 17, line 11, to col. 18, line 64).

13. Claims 1 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0102754 to Morman et al.

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14. The applied reference has common inventors and a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

15. For Claims 1 and 18, Morman '754 teaches an absorbent article including a chassis having a front waist region, a back waist region, and a crotch region extending between the front and back waist regions (Figs. 1-9, paragraphs 1, 7, and 70). An outer cover member extends longitudinally between the front and back waist regions, a bodyside liner extends longitudinally between the front and back waist regions, and an absorbent body structure is sandwiched between the outer cover member and the bodyside liner (paragraph 80). The bodyside liner includes a material having a necked base layer of a fluid permeable material, the base layer material being necked by being tensioned in a first direction (paragraphs 78, 86). Morman '754 teaches at least a first and a second strip of elastomeric material attached to the necked base layer material with a space between the strips such that a center necked region of the base layer material is bordered on at least two longitudinally extending sides by flat, planar composite regions of the elastomeric materials and the base layer material, the center region being generally aligned with the absorbent body structure, and the center region of necked base layer material being attached to the absorbent body structure in its



necked condition and the composite regions are stretchable in at least a second direction of the absorbent article (Figs. 1-9, paragraphs 12, 16-17, 41-43, 47, 52-56, 74-75).

***Claim Rejections - 35 USC § 103***

16. Claims 12-13 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roessler '245 in view of U.S. Patent No. 4,900,317 to Buell.

17. For Claim 12, Roessler '245 teaches all the limitations of Claim 1, as described above in paragraph 6. Roessler teaches the outer cover member and the composite regions of the bodyside liner both being formed of similar materials (col. 5, lines 20-25, col. 13, lines 45-67, col. 14, lines 51-61, col. 17, lines 25-64, col. 23, line 61 to col. 24, line 47; note the side panels 42 may be integrally formed with either the outer cover 30 or the bodyside liner 32). Roessler does not expressly teach each of the composite regions being folded to form a folded composite region at a respective opposite side fold line of the chassis, extending laterally back under the absorbent body structure, and being attached to each other such that the folded composite regions also define the outer cover member of the chassis. However, this feature is well known in the art. Buell '317 confirms this and teaches elasticized composite strips being folded at a side fold line of the chassis, extending laterally back under the absorbent body structure, and being attached to each other such that the composite regions also define the outer cover member of the chassis (Figs. 1 and 3-7 and Abstract). Buell teaches that the diapers of his invention allow air flow, but contain body fluids and are cooler and self-

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dried to a greater extent than other diapers (col. 9, line 3, to col. 10, line 5, and col. 17, lines 30-36). It would have been obvious to one of ordinary skill in the art at the time of the invention by the Applicant to modify Roessler '245 to include each of the composite regions being folded to form a folded composite region at a respective opposite side fold line of the chassis, extending laterally back under the absorbent body structure, and being attached to each other such that the folded composite regions also define the outer cover member of the chassis, as taught by Buell, to contain body fluids while allowing air flow and self-drying, as taught by Buell.

18. For Claim 13, Roessler '245 teaches leg elastics (leg elastic members 36, Figs. 1-2). Roessler does not expressly teach leg elastics between the folded composite regions. Buell teaches leg elastics between folded composite regions (elastic elements 31 and 64, Figs. 3-7, col. 7, line 52 to col. 8, line 32, and col. 13, lines 17-43). It would have been obvious to modify Roessler to include leg elastics between folded composite regions, for the same reasons as described above for Claim 12 in paragraph 17.

19. For Claim 15, Roessler '245 teaches portions of the composite regions of the bodyside liner being folded outboard of the absorbent body structure so as to define longitudinally extending containment flaps on opposite lateral sides of the absorbent body structure (containment flaps 46, Fig. 2 and col. 6, lines 27-52).

20. For Claim 16, Roessler '245 teaches the various components being assembled together and attached (col. 7, lines 6-16, col. 18, lines 40-68). Roessler does not expressly teach the composite regions being attached to an underside of the absorbent body structure. Buell '317 teaches the composite regions being attached to an

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underside of the absorbent body structure (securement means 27 and 38, Figs. 2-7, col. 5, line 64 to col. 6, line 4, and col. 14, lines 5-12). It would have been obvious to modify Roessler to including attaching the composite regions to an underside of the absorbent body structure, for the same reasons as described above for Claim 12 in paragraph 17.

21. For Claim 17, Roessler '245 teaches the composite regions of the bodyside liner defining longitudinal strips extending outwardly from the center region and defining elastomeric side panels that are attached at side seams of the chassis to define a pant-like structure (side panels 42, Figs. 1-2, col. 3, lines 61-66, col. 23, line 61 to col. 24, line 47). Roessler does not teach the composite strips being folded outboard of the side panels at fold lines and extending laterally back under the absorbent body structure and attached to each other such that the composite regions also define the outer cover member of the chassis. This feature is taught by Buell '317, as indicated above for Claim 12 in paragraph 17. It would have been obvious to modify Roessler to include this feature, for the same reasons as described above for Claim 12 in paragraph 17.

### ***Conclusion***

22. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paula L. Craig whose telephone number is (571) 272-5964. The examiner can normally be reached on 8:30AM-4:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paula L Craig  
Examiner  
Art Unit 3761

PLC

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Tatyana', written over the printed name and title.